SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

CV 2004-006512 01/03/2005

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
M. L. Smith
Deputy

FILED: 01/04/2005

KEVIN DIEBALL, et al. GERALD W ALSTON

v.

MICHAEL C WECK, et al. RICHARD C GRAMLICH

DARRELL S HUSBAND

MINUTE ENTRY UNDER ADVISEMENT RULING

2:25 p.m. This is the time set for oral argument on Plaintiffs' Motion for Summary Judgment. Plaintiff Kevin Dieball is present, and represented by counsel, Gerald W. Alston. Defendants are represented by counsel, Darrell S. Husband.

Court reporter, Jessica Casto Moroz, is present.

Argument is presented.

IT IS ORDERED taking this matter under advisement.

3:40 p.m. Hearing concludes.

LATER:

This matter was taken under advisement. The Court has considered the memoranda and arguments of counsel. The Court agrees with Plaintiffs that the *Blasdell* case compels summary judgment in their favor. *Blasdell v. J.G. Boswell Co.*, 20 Ariz. App. 435, 513 P.2d 973 (1963). The alleged oral modification of the notes, supported solely by the affidavit of Michael Weck, is conclusory, vague and leaves at least one critical term unresolved: Payment terms on the balance due after the foreclosure sale of the real property securing the notes. Therefore, the Court finds Docket Code 019

Form V000A

Page 1

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

CV 2004-006512 01/03/2005

that there are no genuine issues of material fact and Plaintiffs are entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED granting Plaintiffs' Motion for Summary Judgment. Any amounts recovered by Plaintiffs from excess proceeds in Maricopa County Superior Court Case CV2004-006018 shall offset the judgment in this case.